

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PAUL SMITH,

Plaintiff,

9:11-CV-282

vs.

(NAM/DRH)

**JOSEPH A. ROCK, Superintendent, Upstate
Correctional Facility; RICHARD MacWILLIAMS,
Correctional Officer, Upstate Correctional Facility;
C. ROCK, Correctional Officer, Upstate Correctional
Facility; BUSHY, Officer, Upstate Correctional Facility;
UHLER, Deputy of Security, Upstate Correctional
Facility; TIMOTHY A. DEBYAH, Correctional Officer;
HUNGERFORD, Sgt.; and T. RAMSDELL, Correctional
Officer, Upstate Correctional Facility,**

Defendants.

APPEARANCES:

OF COUNSEL:

PAUL SMITH
00-A-2268
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953
Plaintiff, *Pro Se*

HON. ERIC T. SCHNEIDERMAN, Attorney General for the State of New York
MICHAEL G. McCARTIN, ESQ. Assistant Attorney General
The Capitol
Albany, New York 12224-0341
Attorney for Defendants

Norman A. Mordue, United States District Judge

ORDER

The above matter comes to me following a Report-Recommendation by Magistrate Judge David R. Homer (Dkt. No. 44). No objections have been filed.

After careful review of all of the papers herein, including the Magistrate Judge's Report-

Recommendation, and no objections having been submitted thereto, it is

ORDERED that the Report-Recommendation (Dkt. No. 44) is accepted; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 22) is granted to the extent that plaintiff's complaint is conditionally dismissed as set forth below; and it is further

ORDERED that **this action will be dismissed automatically, without further motion by defendants, and without further order of the Court, if plaintiff fails to file and serve an amended complaint on or before May 15, 2012;** and it is further

ORDERED that **PLAINTIFF IS ADVISED THAT, IF HE FAILS TO FILE AN AMENDED COMPLAINT ON OR BEFORE MAY 15, 2012, HIS CASE WILL BE DISMISSED WITH PREJUDICE;** and it is further

ORDERED that plaintiff is advised that, if he chooses to file an amended complaint, it will supersede and replace the initial complaint in all respects; therefore, he should include in it all claims from the initial complaint that he wishes to pursue. The Court further recommends that in drafting an amended complaint, plaintiff follow the guidelines set forth in the Report and Recommendation; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon all parties in accordance with the Local Rules.

IT IS SO ORDERED.

Date: March 19, 2012
Syracuse, New York


Honorable Norman A. Mordue
U.S. District Judge